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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA

10 JUAN CARRANZA,

11 Petitioner,

12 v.

13 RICK HILL, Warden,

14 Respondent.

Case No. 2:19-0037 CAS (ADS)

ORDER DENYING  
MOTION FOR RECONSIDERATION

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16 Before the Court is Petitioner Juan Carranza's "Motion for Reconsideration (and  
17 Objections)" ("Motion for Reconsideration") in which Petitioner objects to the Court's  
18 Order and Judgment dismissing his Petition for Writ of Habeas Corpus and Certificate  
19 of Appealability. [Dkt. No. 7]. For the reasons discussed below, the Motion for  
20 Reconsideration is denied.

21 **I. RELEVANT PRIOR PROCEEDINGS**

22 On December 25, 2018, Petitioner constructively filed a Petition for Writ of  
23 Habeas Corpus by a Person in State Custody challenging a 2005 first-degree murder  
24 conviction on grounds that certain DNA evidence was not tested. [Dkt. No. 1].

1 Petitioner concurrently filed an Election Regarding Consent to Proceed Before a United  
2 States Magistrate Judge in which he voluntarily consents to have a United States  
3 Magistrate Judge conduct all further proceedings in this case, decide all dispositive ad  
4 non-dispositive motions, and order the entry of final judgment.<sup>1</sup> [Dkt. No. 2]. The  
5 Court's review of PACER revealed that Petitioner previously challenged the same 2005  
6 conviction by filing a federal habeas petition in this Court in 2010 ("2010 Petition").  
7 Carranza v. McEwen, Case No. 2:10-06772 CAS (VBK).<sup>2</sup> The Court had dismissed the  
8 2010 Petition with prejudice and declined to issue a Certificate of Appealability. Id.,  
9 [Dkt. No. 18]. Thereafter, the Ninth Circuit Court of Appeals denied Petitioner's  
10 Application for Certificate of Appealability. Id., [Dkt. No. 24]. PACER further revealed  
11 that Petitioner did not seek and obtain the Ninth Circuit Court of Appeals' authorization  
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13 <sup>1</sup> "Upon consent of the parties," a magistrate judge "may conduct any or all proceedings  
14 in a jury or nonjury civil matter and order the entry of judgment in the case." 28 U.S.C.  
15 § 636(c)(1). Here, Petitioner has consented and Respondent has not yet been served  
16 and therefore is not yet a party to this action. See, e.g., Travelers Cas. & Sur. Co. of Am.  
17 V. Brenneke, 551 F.3d 1132, 1135 (9th Cir. 2009) ("A federal court is without personal  
18 jurisdiction over a defendant unless the defendant has been served in accordance with  
19 Fed.R.Civ.P. 4.") (internal quotation marks and citation omitted). Thus, all parties have  
20 consented pursuant to § 636(c)(1). See Wilhelm v. Rotman, 680 F.3d 1113, 1119-21 (9th  
21 Cir. 2012) (holding that a magistrate judge had jurisdiction to sua sponte dismiss  
22 prisoner's lawsuit under 42 U.S.C. § 1983 for failure to state claim because prisoner  
23 consented and was only party to action); Carter v. Valenzuela, No. CV 12-05183 SS, 2012  
24 WL 2710876, at \*1 n. 3 (C.D. Cal. July 9, 2012) (finding after Wilhelm, a magistrate  
judge had authority to deny successive habeas petition when petitioner had consented  
and Respondent had not yet been served with petition).

<sup>2</sup> Where necessary, the Court takes judicial notice of the public records. See Fed. R.  
Evid. 201(b)(2) ("The court may judicially notice a fact that is not subject to reasonable  
dispute because it . . . can be accurately and readily determined from sources whose  
accuracy cannot reasonably be questioned."); United States v. Wilson, 631 F.2d 118, 119  
(9th Cir. 1980) ("[A] court may take judicial notice of its own records in other cases, as  
well as the records of an inferior court in other cases."); Harris v. Cty. of Orange, 682  
F.3d 1126, 1132 (9th Cir. 2012) (holding that a court may take judicial notice of  
undisputed matters of public record).

1 prior to filing the instant Petition. Therefore, on March 26, 2019, the Court issued an  
2 Order Dismissing Second or Successive Federal Habeas Petition and Denying Certificate  
3 of Appealability (“Order Dismissing Petition”), in which the Court dismissed the instant  
4 Petition without prejudice to file a new action if, and when, Petitioner obtains  
5 permission to file a successive federal habeas petition. [Dkt. No. 5]. The Judgment was  
6 issued on March 29, 2019. [Dkt. No. 6].

7 On April 15, 2019, Petitioner filed the Motion for Reconsideration. [Dkt. No. 7].  
8 Petitioner acknowledges that the “Petition is second or successive” but contends that  
9 “it’s a new claim based upon laws . . . that came after the conviction and appeal process.”  
10 [Id., p. 1]. Petitioner argues that DNA testing of beer bottles at the crime scene could  
11 have impeached a prosecution witness and in turn exonerated Petitioner as the shooter.  
12 [Id., p. 4]. Petitioner relies on the United States Supreme Court decision in District  
13 Attorney's Office for Third Judicial Dist. v. Osborne, 557 U.S. 52 (2009), to support his  
14 position that the state’s failure to conduct DNA testing violated Petitioner’s rights to a  
15 defense and due process under the Sixth and Fourteenth Amendments. [Id., pp. 4-5].  
16 Petitioner further requests that the Court reconsider issuing a Certificate of  
17 Appealability. [Id., pp. 8-9].

18 Also on April 15, 2019, Petitioner filed a Notice of Appeal in the Ninth Circuit  
19 Court of Appeals. [Dkt. No. 8]. The Notice of Appeal presents substantially the same  
20 arguments as in the Motion for Reconsideration. Compare [Dkt. No. 8] with [Dkt.  
21 No. 7]. Because the Motion for Reconsideration was pending in this Court, the Ninth  
22 Circuit Court of Appeals issued an Order holding the appellate proceedings in abeyance  
23 pending this Court’s resolution of the Motion for Reconsideration. [Dkt. No. 11].  
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1 **II. DISCUSSION**

2 It appears that Petitioner brings the Motion for Reconsideration under Federal  
3 Rule of Civil Procedure 60(b). [Id., p. 6]. Under Rule 60, a court may relieve a party  
4 from final judgment for the following reasons:

5 (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly  
6 discovered evidence that, with reasonable diligence, could not have been  
7 discovered in time to move for a new trial under Rule 59(b); (3) fraud  
8 (whether previously called intrinsic or extrinsic), misrepresentation, or  
9 misconduct by an opposing party; (4) the judgment is void; (5) the judgment  
has been satisfied, released or discharged; it is based on an earlier judgment  
that has been reversed or vacated; or applying it prospectively is no longer  
equitable; or (6) any other reason that justifies relief.

10 Fed. R. Civ. P. 60(b).

11 Petitioner has failed to set forth any reason pursuant to Rule 60(b) for relieving  
12 him from the Judgment. Specifically, Petitioner's case was dismissed because he did not  
13 obtain the Ninth Circuit's authorization prior to filing a second or successive federal  
14 habeas petition. Under 28 U.S.C. 2244(b)(2), second or successive petitions must be  
15 dismissed unless the petitioner obtains authorization from the Circuit Court to file, can  
16 show a new rule of retroactive constitutional law, or that a newly discovered factual  
17 predicate is sufficient to establish by clear and convincing evidence that no reasonable  
18 factfinder would find the petitioner guilty.

19 Petitioner contends that the instant Petition is not second or successive because it  
20 challenges, not his conviction, but a different set of proceedings in state court (to obtain  
21 DNA testing under California law) and relies on laws that were enacted after Petitioner's  
22 2005 conviction. However, a review of the Petition reflects that it concerns "a  
23 conviction and/or sentence" and "DNA-Testing". [Dkt. No. 1, p. 2]. The Petition also  
24 reflects that it asserts a Brady violation for failure to test DNA and asserts "No scientific

evidence places me at murder". [Dkt. No. 1, p. 6]. Petitioner is clearly challenging the same 2005 first-degree murder conviction that he attempted to challenge in the 2010 Petition because Petitioner claims that DNA testing would exonerate him. Second, the "new laws" that Petitioner relies on, California Penal Code § 1405 (2009) and Osborne, 557 U.S. 52 (2009), were enacted or decided before his 2010 Petition. As such, any claims based on those laws should have been raised in the 2010 Petition and would not now exempt Petitioner from the requirement to obtain Ninth Circuit authorization to file a second or successive petition. Without that authorization, this Court has no jurisdiction over the matter. Therefore, because Petitioner has failed to show that he should be relieved from the Order Dismissing Petition and Judgment under Rule 60(b), the Motion for Reconsideration is DENIED.

### **III. CERTIFICATE OF APPEALABILITY**

Petitioner also moves the Court to reconsider its declination to issue a Certificate of Appealability. Again, the Court finds that Petitioner has not made a substantial showing of the denial of a constitutional right or that the Court erred in its procedural ruling and, therefore, a certificate of appealability will not issue in this action. See 28 U.S.C. § 2253(c)(2); Fed. R. App. P. 22(b); Miller-El v. Cockrell, 537 U.S. 322, 336 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000).

IT IS SO ORDERED.

Dated: June 13, 2019

/s/ Autumn D. Spaeth  
HONORABLE AUTUMN D. SPAETH  
United States Magistrate Judge